

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of  
  
Jose A. Mollinedo  
  
Victorville, CA

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File Number: EB-04-LA-072  
  
NAL/Acct. No.: 200532900004  
FRN: 0012227534

**MEMORANDUM OPINION AND ORDER**

**Adopted:** February 26, 2007

**Released:** February 28, 2007

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, issued pursuant to Section 405 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 1.106 of the Commission’s rules,<sup>2</sup> we grant, to the extent indicated herein, a Petition for Reconsideration (“*Petition*”) filed on February 13, 2006, by Jose A. Mollinedo (“Mollinedo”)<sup>3</sup> of a *Forfeiture Order*<sup>4</sup> imposing a ten thousand dollar (\$10,000) monetary forfeiture penalty against him for willful and repeated violation of Section 301 of the Act.<sup>5</sup> The noted violation involves Mollinedo’s operation of an unlicensed radio transmitter on 90.9 MHz in Victorville, California. For the reasons discussed below, we reduce the forfeiture amount to five hundred dollars (\$500).

**II. BACKGROUND**

2. On January 31, 2005, the Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$10,000 to Mollinedo, finding that Mollinedo apparently willfully and repeatedly operated an unlicensed radio transmitter on 90.9 MHz in Victorville, California.<sup>6</sup> Mollinedo filed a response to the *NAL* on March 16, 2005 (“*Response*”). In his *Response*, Mollinedo stated that he received bad advice from an associate regarding the need for a license to operate, and that since he received the *NAL*, he stopped operating the radio equipment and destroyed it. On January 13, 2006, after reviewing Mollinedo’s *Response*, the Western Region, Enforcement Bureau, released the *Forfeiture Order*, and imposed a \$10,000 forfeiture on Mollinedo for his willful and repeated violation of Section

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<sup>1</sup> 47 U.S.C. § 405.

<sup>2</sup> 47 C.F.R. § 1.106.

<sup>3</sup> Mollinedo’s filing is not captioned as a petition for reconsideration and is in letter form. However, because it was timely filed, we are treating it as a petition for reconsideration of the *Forfeiture Order* pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.106.

<sup>4</sup> *Jose A. Mollinedo*, 21 FCC Rcd 181 (EB 2006) (“*Forfeiture Order*”).

<sup>5</sup> 47 U.S.C. § 301.

<sup>6</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532900004 (Enf. Bur., Western Region, Los Angeles Office, released January 31, 2005).

301 of the Act. In the *Forfeiture Order*, the Western Region noted that Mollinedo did not deny operating radio transmitting equipment without a license, nor did he deny that he received at least one of the Los Angeles Office Notices prior to receiving the *NAL*. Rather than heed the official warning, Mollinedo chose to listen to an associate who had told him that he apparently did not need a license if he only played music but did not play advertisements, and resumed operation of his radio transmitting equipment without a license. The Western Region also found in the *Forfeiture Order* that Mollinedo's assertion, that since receipt of the *NAL* he no longer broadcasts and has destroyed his equipment, did not provide a basis for reduction or cancellation of the forfeiture. In his *Petition*, Mollinedo seeks dismissal of the forfeiture.

### III. DISCUSSION

3. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>7</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>8</sup> Mollinedo raises two arguments. First, Mollinedo again asserts that he relied on bad advice from an associate. This argument has been thoroughly considered and rejected, and thus does not support reconsideration of the *Forfeiture Order*.<sup>9</sup>

4. In his *Petition*, Mollinedo also, for the first time, asserts an inability to pay the forfeiture. Mollinedo supplied personal financial information to support this claim. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.<sup>10</sup> While we find that Mollinedo willfully and repeatedly violated Section 301 of the Act, based upon his inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the \$10,000 forfeiture to \$500 is warranted.<sup>11</sup>

### IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>12</sup> and Section 1.106 of the Commission's Rules,<sup>13</sup> Jose A. Mollinedo's Petition for Reconsideration, filed February 13, 2006, **IS GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED IN ALL OTHER RESPECTS.**

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<sup>7</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>8</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257.

<sup>9</sup> In his *Petition*, Mollinedo reiterates his claim that he was given inaccurate advice from an associate concerning his need for a license. Mollinedo raises no new facts or arguments in his *Petition* concerning this issue, therefore, we find no reason to disturb the Western Region's determination that "the advice Mollinedo received from an associate is irrelevant here. Mollinedo was warned orally and in writing by Los Angeles agents in March, 2004 that he needed a license and to discontinue operation of his radio transmitting equipment, yet, despite these warnings, Mollinedo resumed operation of his radio transmitting equipment without Commission authorization in September, 2004." *Forfeiture Order* at para. 9.

<sup>10</sup> See *PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

<sup>11</sup> See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues).

<sup>12</sup> 47 U.S.C. § 405.

<sup>13</sup> 47 C.F.R. § 1.106.

6. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>14</sup> Jose A. Mollinedo **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for violations of Section 301 of the Act.<sup>15</sup>

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, SW, Room 1-A625, Washington, D.C. 20554.<sup>17</sup>

8. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Jose A. Mollinedo, at his address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau

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<sup>14</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>15</sup> 47 U.S.C. § 301.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.